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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/556,481	11/14/2005	Christopher Malyszewicz	76241.010500	1232
7590 Richard E Kurtz II Greenberg Traurig Suite 1200 1750 Tysons Boulevard McLean, VA 22102		08/27/2007	EXAMINER HARDEE, JOHN R	
			ART UNIT 1751	PAPER NUMBER
			MAIL DATE 08/27/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/556,481	Applicant(s) MALYSZEWICZ, CHRISTOPHER	
	Examiner John R. Hardee	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-68 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 35-68 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Scope and Interpretation

1. Applicant has recited compositions containing long-chain alkyl polyamines. It is clear from context that "long-chain" modifies "alkyl", rather than "polyamine".

Specification

2. The disclosure is objected to because of the following informalities: The drawings should be described under a "Brief Description of the Drawings" heading.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 35, 37 and 42-68 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the polyamines of claims 36 and 38, does not reasonably provide enablement for any and all compounds which might be considered polyamines, such as amine polymers. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make or use the invention commensurate in scope with these claims. The examiner recommends that the limitations of claim 36 be incorporated into the independent claims to overcome this rejection.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 35-54 and 59-62 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 45 of copending Application No. 11/054,474. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '474 application recites a composition comprising at least one alcohol, at least one long-chain alkyl polyamine and at least one halogen. Determination of the results effective amounts of these constituents would be an obvious expedient, as would the choice of particular alcohols. It would have been obvious at the time that the invention was made to make

Art Unit: 1751

compositions as presently claimed, because the '474 recites compositions with a species-genus relationship to those presently recited.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 35-68 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-40 of copending Application No. 11/569,287. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '287 recites the same compositions as presently recited, except that they are recited in the '287 as being skin cleansing and disinfecting compositions. Accordingly, the claims of the '287 anticipate the present claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

Art Unit: 1751

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 1-11, 13-23 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eggensperger et al., US 5,276,047 in view of Ofusu-Asante et al., US 6,387,856. . The Eggensperger reference discloses the use of alkylated polyamines as shown in the abstract for inclusion in surfactants, detergents and cleansing and polishing agents. R is a straight or branched alkyl or alkylene radical of 10-14 carbons, n and m are non-zero, and $n+m = 4-12$. Suitable solvents include low molecular weight univalent (monoprotic) alcohols (col. 2, lines 6+), making the use of mixtures of such alcohols obvious. Determination of the solvent-effective amount of disclosed solvents amounts to ordinary experimentation, as does determination of the cleaning-effective amount of the disclosed cleaner. The solvents act as wetting agents, and the amine has surfactant properties. Addition of a halogen is not disclosed.

Ofusu-Asante teaches that antimicrobial compositions for manual dishwashing may comprise 0.001-2% of iodine atoms complexed with amphoteric surfactant (abstract). The compositions are disclosed as stable at a pH of 7-10, implying the use of a buffer to stabilize pH. It would have been obvious at the time that the invention was made to incorporate the iodine-amphoteric complex of Ofusu-Asante into the hard surface cleaning compositions of Eggensperger, because Eggensperger discloses at col. 3, lines 5-6 that other disinfectants may be added to the compositions disclosed therein, and Ofusu-Asante teaches iodine-amphoteric complexes for use in hard surface

Art Unit: 1751

cleaning compositions such as manual dishwashing detergents. Regarding claim 49, amphoteric surfactants are commonly obtained as a mixture of chain lengths. Language drawn to anti-viral, anti-fungal, etc. compositions, as well as binding of DNA and encapsulation recite inherent properties and intended use and are afforded little patentable weight.

11. Any prior art made of record and not relied upon is of interest and is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 1751

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "J. Hardee", written in a cursive style.

John R. Hardee
Primary Examiner
August 22, 2007